

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-7637

76-7637

B P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-7637

CHARLES D. REICH,

Appellant

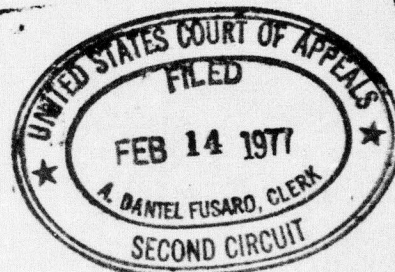
-v-

DOW BADISCHE COMPANY AND
DOW CHEMICAL COMPANY,

Appellees.

APPEAL

JOINT APPENDIX



PAGINATION AS IN ORIGINAL COPY

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WY JUDGE WY

DATE	NR.	PAGE, 2	PROCEEDINGS
06-29-76	(1)	Filed complaint. Issued summons.	
07-12-76	(2)	Filed summons with marshals return. SERVED: DOW CHEMICAL COMPANY, on 7-2-76.	
07-30-76	3.	Filed stip & order that the time for deft named to answer etc, is extended to 9-10-76. Conner, J.	
08-03-76	4.	Filed defts first set of interrogatories and requests for documents.	
9-13-76	5.	Filed stip & order that the time for pliff to respond to defts first set of interrogatories, is extended to 9-15-76, and the time for defts named to move or answer is extended to 9-30-76. Wyatt, J.	
9-30-76	6.	Filed stip & order that the time for pliff to respond to defts interrogatories is extended to 9-22-76 and the time for defts Dow Badische Company and Dow Chemical Co to move etc, is extended to 10-8-76. Wyatt, J.	
10-13-76	7.	Filed defts Affidavit & Notice of Motion for an order dismissing the complaint, etc, returnable on 10-29-76.	
10-13-76	8.	Filed defts memorandum of law in support of said motion.	
10-13-76	9.	Filed pliffs answers to defts first set of interrogatories.	
10-26-76	10.	Filed pliffs Affidavit in opposition to defts motion to dismiss action.	
10-26-76	11.	Filed pliffs memorandum in opposition to the motion to dismiss the complaint.	
10-28-76	12.	Filed stip & order that the defts motion to dismiss the complaint is extended to 11-12-76, Wyatt, J.	
11-10-76	13.	Filed stip & Order that the defts motion to dismiss the complaint, etc, is extended to 11-19-76. Wyatt, J.	
11-16-76	14.	Filed defts reply affidavits in support of motion to dismiss etc, as indicated.	
11-16-76	15.	Filed defts reply memorandum in support of defts motion to dismiss the complaint.	
11-22-76	16.	Filed memo endorsed on motion filed 10-13-76. The motion is granted. Settle order on notice. Wyatt, J. M/W.	
10-EX		PRE-TRIAL CONFERENCE HELD BY MAC. BERNIKOW.	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHARLES D. REICH,

Plaintiff,

-vs-

DOW BADISCHE COMPANY, and DOW CHEMICAL
COMPANY,

Defendant.

:
:
76 Civ.

:
:
COMPLAINT

-----X
INTRODUCTION

1. Plaintiff, Charles D. Reich, brings this action to enjoin the defendants, Dow Badische Company, and Dow Chemical Company from violating the provisions of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq., and of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 et seq., and to restrain any withholding of any amounts deemed to be unpaid minimum wages or unpaid overtime compensation under the Age Discrimination in Employment Act of 1967, supra, to compel employment or reinstatement to this plaintiff who is entitled thereto under the Age Discrimination in Employment Act of 1967, supra, and for monetary relief, and for such other legal or equitable relief as may be appropriate to effectuate the purposes of the Act.

JURISDICTION

2. Jurisdiction of this action is conferred upon the Court pursuant to 28 U.S.C. 1337 in conjunction with the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621, 626(c), prohibiting an employer's failure or refusal to hire or retain any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age.

3. In accordance with the provisions of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621, 626(d), plaintiff gave notice of an intent to file suit to the Secretary of Labor more than sixty days prior to the commencement of this action. Notice of an intent to file suit against defendant Dow Badische Company was given to the Department of Labor on February 11, 1976. Notice of an intent to file suit against defendant Dow Chemical Company was given on March 2, 1976. Plaintiff received confirmation of receipt of both notices in a letter from the Employment Standards Administration, U.S. Department of Labor, dated April 6, 1976.

4. The Department of Labor has failed to act. Plaintiff, therefore, is entitled to bring this civil action to the Court on his own behalf pursuant to Sections 626(c) and (d) of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq.

PLAINTIFF

5. Plaintiff Charles D. Reich has been employed by the defendant companies since October, 1965. Plaintiff was first employed by defendant Dow Chemical Company. After the Dow Badische Company was formed, he was transferred to that company. At the time of termination of employment, June 29, 1973, plaintiff was employed at Dow Badische's New York offices at 350 Fifth Avenue, New York City. At termination of employment, plaintiff was 58 years of age and had been employed by defendants for eight years.

DEPENDANTS

6. Defendant Dow Badische Company is a 50%-owned subsidiary of the defendant Dow Chemical Company. It maintains

offices at 111 West 40th Street, New York City, as well as at 350 Fifth Avenue, New York, N.Y., and 350 Fifth Avenue, N.Y., N.Y.

7. Defendant Dow Badische Company is also a 50%-owned subsidiary of BASF, A.G. of Ludwigshafen, West Germany.

8. Both the defendant companies named in this complaint are engaged in interstate commerce, upon plaintiff's information and belief.

ALLEGATIONS

9. Plaintiff Charles D. Reich was employed at the offices of defendant Dow Badische Company, in the City, County and State of New York, for approximately eight years ending in June of 1973. Prior to that time plaintiff worked for Dow Chemical Company, which employment carried over to the employment at Dow Badische Company for pension purposes.

10. On or about the 29th day of June, 1973, the defendant Dow Badische Company wilfully discharged plaintiff, employed in a sales capacity with defendant for the aforesaid period, from his job.

11. At the time of his discharge plaintiff was 58 years of age.

12. Plaintiff was denied equal terms and conditions of employment because of his age, and was ultimately discharged as a result of this and of continuing discrimination against him and in favor of younger sales persons with less experience.

13. The aforesaid acts deprived plaintiff of the vesting of his pension rights, which would have vested after ten years of employment.

14. Defendants have continued to deprive plaintiff of a continuing source of income and substantial retirement benefits.

15. Upon information and belief, plaintiff has learned that the defendant Dow Badische Company has through executives of that

defendant, conspired and attempted to destroy pertinent records pertaining to his case and to the complaint made prior to the institution of this lawsuit , to the Solicitor of Labor.

16. Defendants have continued to refuse to grant plaintiff restitution and reinstatement in his employment position, and a pension and retirement benefits to which he would be entitled but for the wrongful discharge.

17. Plaintiff has sought relief through various channels of federal and state government, to no avail. Plaintiff has notified the Solicitor of Labor of his intent to sue privately, and more than 60 days has elapsed since that notification.

18. Upon information and belief, plaintiff is but one of many persons discriminated against in the defendants' sales force on the basis of their age, to their detriment, and to the advantage of younger sales employees.

19. By the above and other acts , defendants, who were and are a " person" within the meaning of section 11(a) of the Age Discrimination in Employment Act of 1967(29 U.S.C. 621-634)(the "Act" and subject to the provisions of Section 4(a) of the Act, have violated its provisions against discriminating on the basis of plaintiff being between the ages of 40 and 65.

WHEREFORE, the plaintiff prays this Court:

1. For Judgment permanently enjoining the defendants, their officers, agents employees and those persons actively participating on their behalf or in concert with them, from violating plaintiff's rights of employment and pension benefits and the provisions of Section 4 of the Act and Section 15 of the Fair Labor Standards Act and

2. For back wages, pension benefits, minimum wages and overtime compensation found by this Court to be due the plaintiff from the defendants, a sum certain to be ascertained at trial, plus interest and

3. Judgment reinstating plaintiff to his former position at Dow Badi: Company with all vested pension rights which would have accrued had he been continuously employed thereat from his original date of hire to the date of reinstatement; and

4. Such other and further relief, including counsel fees and punitive damages, and costs of this Action as to this Court may seem just and proper in the premises.

COLES and WEINER
Attorneys for Plaintiff
1775 Broadway
New York, N.Y. 10019
(212) 972-1278

by *[Signature]*
A Member of the Firm

New York, N.Y.

June 25, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHARLES D. REICH,

Plaintiff,

v.

DOW BADISCHE COMPANY, and
DOW CHEMICAL COMPANY,

Defendants.

DEFENDANTS' FIRST SET
OF INTERROGATORIES AND
REQUESTS FOR DOCUMENTS

76 Civ. 2870 (IBW)

-----X
S I R S :

PLEASE TAKE NOTICE that the defendants, Dow Badische Company and Dow Chemical Company, by their undersigned attorneys, and pursuant to Rules 33 and 34, Federal Rules of Civil Procedure, hereby request plaintiff Charles D. Reich to answer separately and under oath the following written interrogatories as well as requests for documents, separately and fully in writing, within thirty (30) days after the date of service of this notice. The answers should include all information known up to the date of the verification thereof.

Unless otherwise stated, each of these interrogatories and requests for documents is made with regard to the allegations of Paragraph 17 of the Complaint, which reads as follows:

"17. Plaintiff has sought relief through various channels of federal and state government, to no avail. Plaintiff has notified the Solicitor of Labor of his intent to sue privately, and more than 60 days has elapsed since that notification."

1. Please state the identity, including name and address of any and all agencies, instrumentalities and/or

individuals in state or local government through whom relief has at any time been sought.

2. Please state the date of first contact with and/or complaint to any and all agencies, instrumentalities and/or individuals in state or local government identified in response to Interrogatory No. 1 above, whether such contact or complaint was oral or in writing, and describe the nature of the contact and/or complaint and the party against whom relief was sought.
3. Please state the date of any subsequent contacts with and/or complaints to any and all such agencies, instrumentalities and/or individuals in state government, whether such contact or complaint was oral or in writing, and describe the nature of the contact and/or complaint, and the party against whom relief was sought.

You are reminded that, pursuant to Rule 26(e)(2), Federal Rules of Civil Procedure, you are under a duty seasonably to amend your responses to the foregoing interrogatories if you should obtain information from which you would know that a prior response was incorrect when made or from which you would know that the prior response, although correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

REQUESTS FOR DOCUMENTS

You are hereby requested to produce at 10:00 a.m. on the 31st day of August, 1976, at the offices of the undersigned attorneys for defendants, the following documents, or copies thereof in the event that the originals

are not in your possession or under your control, for inspection and copying by defendants:

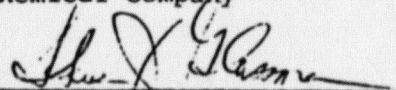
1. All written complaints, correspondence, or other documents sent to, filed with, or provided by plaintiff to any and all agencies, instrumentalities and/or individuals in state or local government through whom relief has been sought, and all records of oral complaints to or contacts with the same.
2. All written responses, correspondence or other documents received from any and all such agencies, instrumentalities and/or individuals in state or local government through whom relief has been sought, and all records of oral responses or contacts from the same.
3. All written complaints, correspondence, or other documents sent to, filed with or provided by plaintiff to any and all agencies, instrumentalities and/or individuals in federal government through whom relief has been sought, and all records of oral complaints to or contacts with the same.
4. All written responses, correspondence, or other documents received from any and all such agencies, instrumentalities and/or individuals in federal government through whom relief has been sought, and all records of oral responses or contacts from the same.
5. All documents referred to in Paragraph 3 of the Complaint.

Dated. New York, New York
July 30, 1976

KAYE, SCHOLER, FIERMAN, HAYS &
HANDLER

Attorneys for Defendants
Dow Badische Company and
Dow Chemical Company

By


Steven J. Glassman

Office and Post Office Address
425 Park Avenue
New York, New York 10022
Telephone (212) 759-8400

JA 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHARLES D. REICH,

Plaintiff,

-vs-

DOW BADISCHE COMPANY and DOW
CHEMICAL COMPANY,

Defendants.

76 Civ. 2870 (IBW)

PLAINTIFF'S ANSWERS TO

DEFENDANTS' FIRST SET

OF INTERROGATORIES

AND REQUEST FOR DOCUMENTS
-----X

Plaintiff CHARLES D. REICH, answering defendants' first set of interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure, says in response to:

Interrogatory No. 1: Relief was sought through the following state and local agencies, instrumentalities, etc.:

New York State Human Rights Commission
Division of Human Rights, Region 1a
79 Worth Street
New York, N.Y.

Interrogatory No. 2: The New York State Human Rights Commission was contacted by telephone in December 1973 and in May 1974. A verified complaint was filed with the State Division of Human Rights, Region 1a, on June 24, 1976. Relief was sought against defendants Dow Badische Company and Dow Chemical Company.

Interrogatory No. 3: All contacts with state agencies, instrumentalities and/or individuals are described in the response to Interrogatory No. 2.

Annexed hereto and made a part hereof, in response to defendants' request for documents and pursuant to Rule 34 of the Federal Rules of Civil Procedure, are, in answer to:

Request No. 1: A copy of the verified complaint, dated June 24, 1976, to the State Division of Human Rights (Region 1a). No record of oral communications is available.

Request No. 2: There is no record of responses from state or local agencies, instrumentalities and/or individuals.

Request No. 3:

To E.S.A., Wages and Hour Division (New York):

Letter of December 4, 1973.

To Leo Friedman, Wages and Hour:

Letter of August 4, 1974.

To Francis V. LaRuffa, Regional Director, U.S. Dept. Labor:

Letter of February 11, 1976, with attachments.

To Charles J. Gau, Compliance Officer (Newark, N.J.):

Correspondence of January 12 and 24, 1974; March 30, 1974; April 9, 1974; April 21, 1974; one undated letter.

To Frank B. Mercurio, Wages and Hour:

Letter of March 2, 1976.

To Hon. Jacob K. Javits, U.S.S.:

Correspondence, with attachments, dated February 8, 1975; April 25, 1975; June 15, 1975; August 31, 1973; September 22, 1975; June 26, 1976; July 3, 1976; August 22, 1976; October 24, 1974.

Request No. 4:

From U.S. Department of Labor, Wage and Hour Division:

Correspondence dated: December 11, 1973; January 7, 1974; April 2, 1974; August 13, 1974; January 23, 1975; February 18, 1976; February 27, 1976; April 6, 1976; May 19, 1976, with attachments.

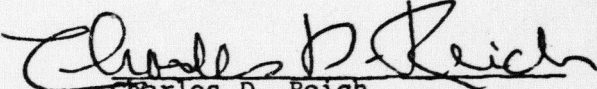
From the offices of Hon. Jacob K. Javits, U.S.S.:

Correspondence dated: April 23, 1974; May 1, 1975;
June 12, 1975; November 10, 1975; and three undated communica-
tions.

Request No. 5: Answered within the materials provided
under Request No. 3.

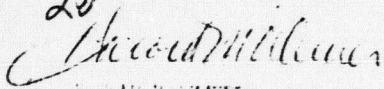
Dated: New York, N.Y.

September 16, 1976


Charles D. Reich

Sworn to before me

this ^{28th} day of September, 1976



NOTARY PUBLIC
STATE OF NEW YORK
My Comm. Expires 12/31/78
8

JA 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

CHARLES D. REICH,	:	<u>NOTICE OF MOTION</u>
Plaintiff,	:	
-against-	:	
DOW BADISCHE COMPANY and	:	76 Civ. 2870 (IBW)
DOW CHEMICAL COMPANY,	:	
Defendants.	:	

- - - - -X

S I R S :

PLEASE TAKE NOTICE that, upon the Complaint herein, Interrogatories, and Answers to Interrogatories, copies of which are annexed hereto, defendants Dow Badische Company and Dow Chemical Company will move this Court, before the Hon. Inzer B. Wyatt, on the ^{29th} day of October, 1976, at 2:30 p.m., or as soon thereafter as counsel may be heard, for an order dismissing the Complaint, pursuant to Rules 12(b)(1) and 12(b)(6), F.R. Civ. P., for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted or, in the alternative, for summary judgment, pursuant to Rule 56, F.R. Civ. P.

Dated: New York, New York
October 8, 1976

KAYE, SCHOLER, FIERMAN, HAYS &
HANDLER

By: 15/
Steven J. Glassman

Office and P.O. Address
425 Park Avenue
New York, New York 10022
(212) 759-8400
Attorneys for Defendants
Dow Badische Company and Dow
Chemical Company

TO: Harold Weiner, Esq.
COLES & WEINER
1775 Broadway
New York, New York 10019
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHARLES D. REICH,

Plaintiff,

-vs-

DOW BADISCHE COMPANY, and DOW CHEMICAL
COMPANY,

Defendant.
-----X

76 Civ. 3870

COMPLAINT

INTRODUCTION

1. Plaintiff, Charles D. Reich, brings this action to enjoin the defendants, Dow Badische Company, and Dow Chemical Company from violating the provisions of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq., and of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 et seq., and to restrain any withholding of any amounts deemed to be unpaid minimum wages or unpaid overtime compensation under the Age Discrimination in Employment Act of 1967, supra, to compel employment or reinstatement to this plaintiff who is entitled thereto under the Age Discrimination in Employment Act of 1967, supra, and for monetary relief, and for such other legal or equitable relief as may be appropriate to effectuate the purposes of the Act.

JURISDICTION

2. Jurisdiction of this action is conferred upon the Court pursuant to 28 U.S.C. 1337 in conjunction with the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621, 626(c), prohibiting an employer's failure or refusal to hire or retain any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age.

3. In accordance with the provisions of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621, 626(d), plaintiff gave notice of an intent to file suit to the Secretary of Labor more than sixty days prior to the commencement of this action. Notice of an intent to file suit against defendant Dow Badische Company was given to the Department of Labor on February 11, 1976. Notice of an intent to file suit against defendant Dow Chemical Company was given on March 2, 1976. Plaintiff received confirmation of receipt of both notices in a letter from the Employment Standards Administration, U.S. Department of Labor, dated April 6, 1976.

4. The Department of Labor has failed to act. Plaintiff, therefore, is entitled to bring this civil action to the Court on his own behalf pursuant to Sections 626(c) and (d) of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq.

PLAINTIFF

5. Plaintiff Charles D. Reich has been employed by the defendant companies since October, 1965. Plaintiff was first employed by defendant Dow Chemical Company. After the Dow Badische Company was formed, he was transferred to that company. At the time of termination of employment, June 29, 1973, plaintiff was employed at Dow Badische's New York offices at 350 Fifth Avenue, New York City. At termination of employment, plaintiff was 58 years of age and had been employed by defendants for eight years.

DEFENDANTS

6. Defendant Dow Badische Company is a 50%-owned subsidiary of the defendant Dow Chemical Company. It maintains

offices at 111 West 40th Street, New York City, as well as at 350 Fifth Avenue, New York, N.Y., and 350 Fifth Avenue, N.Y., N.Y.

7. Defendant Dow Badische Company is also a 50%-owned subsidiary of BASF, A.G. of Ludwigshafen, West Germany.

8. Both the defendant companies named in this complaint are engaged in interstate commerce, upon plaintiff's information and belief.

ALLEGATIONS

9. Plaintiff Charles D. Reich was employed at the offices of defendant Dow Badische Company, in the City, County and State of New York, for approximately eight years ending in June of 1973. Prior to that time plaintiff worked for Dow Chemical Company, which employment carried over to the employment at Dow Badische Company for pension purposes.

10. On or about the 29th day of June, 1973, the defendant Dow Badische Company wilfully discharged plaintiff, employed in a sales capacity with defendant for the aforesaid period, from his job.

11. At the time of his discharge plaintiff was 58 years of age.

12. Plaintiff was denied equal terms and conditions of employment because of his age, and was ultimately discharged as a result of this and of continuing discrimination against him and in favor of younger sales persons with less experience.

13. The aforesaid acts deprived plaintiff of the vesting of his pension rights, which would have vested after ten years of employment.

14. Defendants have continued to deprive plaintiff of a continuing source of income and substantial retirement benefits.

15. Upon information and belief, plaintiff has learned that the defendant Dow Badische Company has through execut of that

defendant, conspired and attempted to destroy pertinent records pertaining to his case and to the complaint made prior to the institution of this lawsuit , to the Solicitor of Labor.

16. Defendants have continued to refuse to grant plaintiff restitution and reinstatement in his employment position, and a pension and retirement benefits to which he would be entitled but for the wrongful discharge.

17. Plaintiff has sought relief through various channels of federal and state government, to no avail. Plaintiff has notified the Solicitor of Labor of his intent to sue privately, and more than 60 days has elapsed since that notification.

18. Upon information and belief, plaintiff is but one of many persons discriminated against in the defendants' sales force on the basis of their age, to their detriment, and to the advantage of younger sales employees.

19. By the above and other acts , defendants, who were and are a " person" within the meaning of section 11(a) of the Age Discrimination in Employment Act of 1967(29 U.S.C. 621-634) (the "A" and subject to the provisions of Section 4(a) of the Act, have violated its provisions against discriminating on the basis of plaintiff being between the ages of 40 and 65.

WHEREFORE, the plaintiff prays this Court:

1. For Judgment permanently enjoining the defendants, their officers, agents employees and those persons actively participating on their behalf or in concert with them, from violating plaintiff's rights of employment and pension benefits and the provisions of Section 4 of the Act and Section 15 of the Fair Labor Standards Act and

2. For back wages, pension benefits, minimum wages and overtime compensation found by this Court to be due the plaintiff from the defendants, a sum certain to be ascertained at trial, plus interest and

3. Judgment reinstating plaintiff to his former position at Dow Badische Company with all vested pension rights which would have accrued had he been continuously employed thereat from his original date of hire to the date of reinstatement; and

4. Such other and further relief, including counsel fees and punitive damages, and costs of this Action as to this Court may seem just and proper in the premises.

COLES and WEINER
Attorneys for Plaintiff
1775 Broadway
New York, N.Y. 10013
(212) 972-1278

by *[Signature]*
A Member of the Firm

New York, N.Y.

June 25, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHARLES D. REICH,

Plaintiff,

v.

DOW BADISCHE COMPANY, and
DOW CHEMICAL COMPANY,

Defendants.

DEFENDANTS' FIRST SET
OF INTERROGATORIES AND
REQUESTS FOR DOCUMENTS

76 Civ. 2870 (IBW)

-----X
S I R S :

PLEASE TAKE NOTICE that the defendants, Dow Badische Company and Dow Chemical Company, by their undersigned attorneys, and pursuant to Rules 33 and 34, Federal Rules of Civil Procedure, hereby request plaintiff Charles D. Reich to answer separately and under oath the following written interrogatories as well as requests for documents, separately and fully in writing, within thirty (30) days after the date of service of this notice. The answers should include all information known up to the date of the verification thereof.

Unless otherwise stated, each of these interrogatories and requests for documents is made with regard to the allegations of Paragraph 17 of the Complaint, which reads as follows:

"17. Plaintiff has sought relief through various channels of federal and state government, to no avail. Plaintiff has notified the Solicitor of Labor of his intent to sue privately, and more than 60 days has elapsed since that notification."

1. Please state the identity, including name and address of any and all agencies, instrumentalities and/or

individuals in state or local government through whom relief has at any time been sought.

2. Please state the date of first contact with and/or complaint to any and all agencies, instrumentalities and/or individuals in state or local government identified in response to Interrogatory No. 1 above, whether such contact or complaint was oral or in writing, and describe the nature of the contact and/or complaint and the party against whom relief was sought.
3. Please state the date of any subsequent contacts with and/or complaints to any and all such agencies, instrumentalities and/or individuals in state government, whether such contact or complaint was oral or in writing, and describe the nature of the contact and/or complaint, and the party against whom relief was sought.

You are reminded that, pursuant to Rule 26(e)(2), Federal Rules of Civil Procedure, you are under a duty seasonably to amend your responses to the foregoing interrogatories if you should obtain information from which you would know that a prior response was incorrect when made or from which you would know that the prior response, although correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

REQUESTS FOR DOCUMENTS

You are hereby requested to produce at 10:00 a.m. on the 31st day of August, 1976, at the offices of the undersigned attorneys for defendants, the following documents, or copies thereof in the event that the originals

are not in your possession or under your control, for inspection and copying by defendants:

1. All written complaints, correspondence, or other documents sent to, filed with, or provided by plaintiff to any and all agencies, instrumentalities and/or individuals in state or local government through whom relief has been sought, and all records of oral complaints to or contacts with the same.
2. All written responses, correspondence or other documents received from any and all such agencies, instrumentalities and/or individuals in state or local government through whom relief has been sought, and all records of oral responses or contacts from the same.
3. All written complaints, correspondence, or other documents sent to, filed with or provided by plaintiff to any and all agencies, instrumentalities and/or individuals in federal government through whom relief has been sought, and all records of oral complaints to or contacts with the same.
4. All written responses, correspondence, or other documents received from any and all such agencies, instrumentalities and/or individuals in federal government through whom relief has been sought, and all records of oral responses or contacts from the same.
5. All documents referred to in Paragraph 3 of the Complaint.

Dated: New York, New York
July 30, 1976

KAYE, SCHOLER, FIERMAN, HAYS &
HANDLER

Attorneys for Defendants
Dow Badische Company and
Dow Chemical Company

By


Steven J. Glassman

Office and Post Office Address
425 Park Avenue
New York, New York 10022
Telephone (212) 759-8400

JA 21

TO: Harold Weiner, Esq.
Coles and Weiner
1775 Broadway
New York, New York 10019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES D. REICH,

Plaintiff,

-vs-

DOW BADISCHE COMPANY and DOW
CHEMICAL COMPANY,

Defendants.

76 Civ. 2870 (LBW)

PLAINTIFF'S ANSWERS TO

DEFENDANTS' FIRST SET

OF INTERROGATORIES

AND REQUEST FOR DOCUMENTS

Plaintiff CHARLES D. REICH, answering defendants' first set of interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure, says in response to:

Interrogatory No. 1: Relief was sought through the following state and local agencies, instrumentalities, etc.:

New York State Human Rights Commission
Division of Human Rights, Region 1a
79 Worth Street
New York, N.Y.

Interrogatory No. 2: The New York State Human Rights Commission was contacted by telephone in December 1973 and in May 1974. A verified complaint was filed with the State Division of Human Rights, Region 1a, on June 27, 1976. Relief was sought against defendants Dow Badische Company and Dow Chemical Company.

Interrogatory No. 3: All contacts with state agencies, instrumentalities and/or individuals are described in the response to Interrogatory No. 2.

Annexed hereto and made a part hereof, in response to defendants' request for documents and pursuant to Rule 34 of the Federal Rules of Civil Procedure, are, in answer to:

Request No. 1: A copy of the verified complaint, dated June 24, 1976, to the State Division of Human Rights (Region 1a). No record of oral communications is available.

Request No. 2: There is no record of responses from state or local agencies, instrumentalities and/or individuals.

Request No. 3:

To E.S.A., Wages and Hour Division (New York):

Letter of December 4, 1973.

To Leo Friedman, Wages and Hour:

Letter of August 4, 1974.

To Francis V. LaRuffa, Regional Director, U.S. Dept. Labor:

Letter of February 11, 1976, with attachments.

To Charles J. Gau, Compliance Officer (Newark, N.J.):

Correspondence of January 12 and 24, 1974; March 30, 1974; April 9, 1974; April 21, 1974; one undated letter.

To Frank B. Mercurio, Wages and Hour:

Letter of March 2, 1976.

To Hon. Jacob K. Javits, U.S.S.:

Correspondence, with attachments, dated February 8, 1975; April 25, 1975; June 15, 1975; August 31, 1973; September 22, 1973; June 26, 1976; July 3, 1976; August 22, 1976; October 24, 1974.

Request No. 4:

From U.S. Department of Labor, Wage and Hour Division:

Correspondence dated: December 11, 1973; January 7, 1974; April 2, 1974; August 13, 1974; January 23, 1975; February 18, 1976; February 27, 1976; April 6, 1976; May 19, 1976, with attachments.

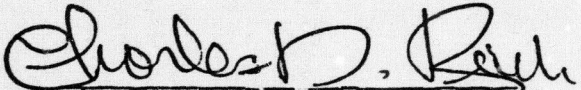
From the offices of Hon. Jacob K. Javits, U.S.S.:

Correspondence dated: April 23, 1974; May 1, 1975;
June 12, 1975; November 10, 1975; and three undated communica-
tions.

Request No. 5: Answered within the materials provided
under Request No. 3.

Dated: New York, N.Y.

September 16, 1976


Charles D. Reilly

Sworn to before me

this ^{23rd} day of September, 1976

HAROLD M. WEINER
Notary Public, State of New York
No. 81687005
Qualified in New York County
Commission Expires March 30, 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
CHARLES D. REICH, :

Plaintiff, :

-v- :

DOW BADISCHE COMPANY and DOW
CHEMICAL COMPANY, :

Defendants. :

76 Civ. 2870 (IBW)

: AFFIDAVIT IN OPPOSITION

: TO DEFENDANTS' MOTION

: TO DISMISS ACTION
----- X

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

CHARLES D. REICH, being duly sworn, deposes and says:

1. I am the plaintiff in the above entitled action, and am making this affidavit in opposition to the motion of defendants, by their attorneys, to dismiss this case on the grounds that (1) I failed to timely notify the Secretary of Labor that I intended to sue privately, after being told that the Solicitor would not handle this matter on my behalf and (2) that I failed to exhaust my State of New York remedies before the appropriate body in that State and (3) that my complaint fails to state a cause of action upon which relief can be granted.

2. From the inception of my complaint to the Secretary of Labor in 1973 I was, and until the present time of commencement of the N.Y. State Division of Human Rights complaint and action and the instant action, continuously engaged in attempts to secure competent counsel to represent me privately, which efforts were well known to the U.S. Department of Labor. I set forth my efforts chronologically below.

3. On or about the 18th day of July, 1973, I consulted James M. Montgomery, Esq., in New York City, N.Y. about the possibility of his representing me against Dow Badische Company. At the request of my present attorneys, Coles and Weiner, he checked his records and confirmed this in a letter of January 27, 1976, a copy of which is annexed as EXHIBIT "A".

4. In December of 1973, I spoke with Mr. Norman Bromberg, of the Wage and Hours Division, U.S. Department of Labor, at 26 Federal Plaza, New York, N.Y. I asked him about my getting a lawyer, and told him I was having difficulty finding one who could represent me and inquired as to whether or not he had any ideas as to who might be able to do so. He told me he was not permitted to recommend private counsel to me. I told him I would sue when I could find a lawyer. At this time, the Dept. of Labor had barely undertaken the investigation of my case, to the best of my recollection.

5. In December of 1973 I had much the same experience and conversation with Mr. Leo Friedman of the U.S. Department of Labor at 1515 Broadway, New York, N.Y.

6. From the meeting with Mr. Montgomery in July of 1973 through December of 1973 I had made several efforts to find an attorney but I do not have a record of who I contacted during that period.

7. On or about October 18, 1974 I contacted a law firm, Gainsburg, Gottlieb, Levitan and Cole, 122 East 42 Street, N.Y.C. by telephone. This was done at the recommendation of someone but I do not remember who referred me to them. They said they did not handle such cases.

8. About April 7, 1974 I had contacted two other law firms. One was the firm of Hahn, Hessin, Margolis and Ryan, 350 Fifth

Avenue, New York, N.Y. and the person I spoke to stated that they did not handle such cases. I had also called, at about the same time, and pursuant to someone's recommendation, the law firm of Otterbourg, Steindler, Houston & Rosen, 230 Park Avenue, New York City, and spoke to a Mr. Stolzer. He informed me that they were in fact retained by Dow Badische Company and thus could not represent me. He stated he would call me to recommend someone else. He never did.

9. In January or February 1975 I wrote to Lowenstein, Sandler, Brochin & Fisher, attorneys in Newark, New Jersey. I do not have a copy of that letter, but I had addressed it to Mr. Murray D. Brochin of that office and had had telephone contact with Mr. Fred Kahn of their firm. A copy of their letter to me dated February 14, 1975 is annexed as EXHIBIT "B".

10. Since that letter, EXHIBIT "B", suggested I telephone or contact Arthur Olick, Esq., of Anderson, Russell, Kill and Olick, 630 Fifth Avenue, I did in fact contact him and met with him March 11, 1975. While he did not state that he could not take my case for lack of expertise in the area, as many of the attorneys had heretofore stated, he did say that he could not do so on a contingency fee basis, and, having no funds at that time to hire a lawyer, I left.

11. Some time in February of 1975 I wrote to Mr. David M. Blicher of Lorenz Blicher Mackey and Webb, in Sacramento, Cal. asking if he could recommend a New York law firm and I received a reply from him dated March 26, 1975 annexed hereto as EXHIBIT "C".

12. As that letter, EXHIBIT "C", recommended I contact the law firm of Carpenter, Bennett and Morrissey in New Jersey, I did so. They said they would not take my case since they were a New Jersey law firm and the matter occurred in New York.

13. About April 11, 1975 I saw Richard Haydock, the head of the Legal Referral Service of the Association of the Bar of the City of New York, at 36 West 44th Street, New York City. He told me that hardly any lawyer would take a case such as mine on a contingency fee basis.

14. Despite this, he did give me the name of a Mr. Myron Gould, Esq. at 1501 Broadway, New York City. I saw Mr. Gould on or about April 17, 1975 and at that time he asked me to contribute the sum of \$10.00 to the Association of the Bar as a requirement of the legal referral service. I made out a check for that amount a copy of which is enclosed. It bears an erroneous year mark of "1974" which should read " 1975" and was subsequently deposited by the Legal Referral Service. (ANNEXED AS EXHIBIT "D").

15. The next day, April 18, 1975, after being told by Mr. Myron Gould that he did not want to handle the case, I spoke to the sister-in-law of one of my customers, a Ms. Mary McDonald, about my efforts to find an attorney. She herself was an attorney but could not take the case.

16. On or about April 23, 1975 I met with Mr. Louis Bailey, an attorney, at 280 Madison Avenue, who said he could not handle my case. I believe he is now associated with James M. Montgomery.

17. Some time during 1974, again in April of 1975 and early in 1976 I was in contact with Doris L. Sassower, Esq., an attorney at 200 Park Avenue. In the earlier contacts she informed me that she could not handle my case because she was retained in these matters on occasion by the defendant Dow Chemical Company but it was not until the 1976 contact that she recommended anyone else.

18. About May 2, 1975 I contacted Robert Gould, Esq., 521 Fifth Avenue, New York City, but did not go to see him as he had required a large fee even to review my case to see if he

would consider taking it.

19. It was some time in the late Spring of 1976 that Ms. Sassower, on my third contact with her, put me in touch with the law firm of Coles and Weiner, 1775 Broadway, New York, N.Y. which firm now represents me, and I met with Harold M. Weiner of that firm. Because of the complexities of the prior contacts with attorneys and the Department of Labor, it was some time after I initially contacted them that the firm decided to accept this matter after investigating the documents and interviewing me on three or more occasions.

20. All during these years, however, I was not sitting on my hands as far as the U.S. Department of Labor was concerned. I had never had a definitive statement from the U.S. Department of Labor that they would not pursue this case in Federal Court until a meeting with Francis V. La Ruffa, Esq., the regional Solicitor of the U.S. Department of Labor on December 19, 1975 at which time he refused to properly pursue my case on my behalf.

21. Despite this refusal, the Department continued to press for Compliance in a manner totally inconsistent with the oral refusal to pursue the case given me by Mr. La Ruffa. Enclosed and annexed as EXHIBITS "E" and "F" are copies of letters of April 6, 1976 and May 19, 1976 from Mr. Leo Friedman of the U.S. Department of Labor. Their efforts at continuing conciliation and attempt to persuade the defendant Dow Badische to comply speak for themselves.

22. As far as my efforts go at agencies other than the U.S. Department of Labor, early in this matter in 1973 I telephoned the New York State Division of Human Rights, which, over the telephone, told me through the person who did not identify themselves that since the home office of the company was out of state, and

the matter seemed to be appropriate for federal relief of some sort, undoubtedly the case would end up with the U.S. Department of Labor and I should go to them to begin with. It was upon that advice that I had started this complaint initially with the U.S. Department of Labor.

23. Despite this fact, my attorneys Coles and Weiner felt that the State Division of Human Rights should be given an opportunity to investigate and determine if it had jurisdiction, and to that end on the 24th of June, 1976 filed a verified complaint with Region Ia of the State Division of Human Rights in Manhattan. This complaint has never been acted upon. I am informed that my attorneys have contacted the State Division on two occasions since the filing of the complaint, but no date has ever been proposed for an investigatory conference, nor has the State Division indicated it will or will not act on the complaint.

24. A copy of that complaint is annexed as EXHIBIT "G". This Court will please note that it was filed prior to the commencement of this federal action, and the State of New York has, according to my attorneys, had the statutory period of time in which to act by way of deferral to the State, and has failed to do so. I also informed the Solicitor of Labor, of my intention to sue, and waited the requisite period of time before doing so.

25. As to the issue of Dow Badische Company and Dow Chemical Company being responsible for each other's acts and actions, I should like to point out that at the time I was hired by these defendants I was initially hired by Dow Chemical Company, and received a pension booklet from Dow based upon Dow Chemical's own pension plan. A copy of that booklet's cover, the original of which in its entirety is available for production to this Court if desired, is annexed as EXHIBIT "H".

26. In addition, I set forth as EXHIBIT "I" a letter from Dow Badische Company's Pension Administrator dated January 28, 1976 which speaks of 8.1 years of credited service in the Employee Retirement Plan, a portion of which is credited to the Dow Chemical Company employment period. Some time in 1966 I was informed of the changeover to Dow Badische from Dow Chemical, which change was wholly involuntary on my part, and the details of which are set forth in a letter I wrote to the Director of Personnel Services of Dow Chemical Company, in Midland Michigan, which I set forth here as "EXHIBIT "J".

27. I should like to point out also that aside from the telephone conversation with the State Division of Human Rights in August of 1973 I had two further telephonic communications with them in December 1973 and May of 1974, the results of which were negative and in each case I was discouraged from coming down to file any complaint.

28. Upon information and belief, Dow Badische Company is a joint venture or 50% owned company owned equally by a German company and the defendant Dow Chemical Company, but its operations at the time of my hire and continuing to date involve Dow Chemical personnel, and it is the Dow Chemical Company which was initially responsible for setting up the pension plan, and running the Dow Badische operation out of Williamsburg, Va. and in New York. In any event, I am informed by my attorneys that there is ample legal precedent under federal wage and hours law to consider them the same employer or acting in concert, for the purposes of jurisdiction under the various federal wage and hours laws and the Age Discrimination in Employment Act.

29. I should like this Court to take express notice of the fact that this motion to dismiss my case is based purely upon legal technicalities and not merits; that not one official of either the Dow Chemical Company or Dow Badische Company has had the temerity upon the initial motion papers to come forth and state under oath that my case has no merit, and that I have, through the efforts set forth above and those of my finally obtained legal counsel, attempted in good faith to exhaust every prerequisite to having my day in court so long denied me by the administrative sloth of the U.S. Department of Labor.

30. For all the foregoing reasons I pray this Court deny this motion in every respect and permit this case to proceed by way of discovery and disclosure, and ultimately to a trial on the merits.

Charles D. Reich
CHARLES D. REICH

Sworn to before me this
22nd day of October 1976.

H. M. Weiner

HAROLD M. WEINER
Notary Public, State of New York
No. 31-9576905
Qualified in New York County
Commission Expires March 30, 1978

received 1/28/76

JAMES M. MONTGOMERY
ATTORNEY AT LAW
280 MADISON AVENUE
NEW YORK, N. Y. 10016

~~XXXXXXXX~~
725-5190

January 27, 1976

Messrs. Coles & Weiner
1775 Broadway
New York, N.Y. 10019

Attention: Harold Weiner, Esq.

Dear Sirs:

This will confirm that Charles D. Reich of Horsepond Road, RFD 3, Carmel, N.Y., consulted me in 1973 about retaining me to institute legal proceedings against his former employer, Dow-Badische, on the ground that he had been discharged in violation of federal statutes prohibiting discrimination against employees on the ground of age.

My appointment book for 1973 indicates that I had an office appointment with him on July 18 of that year at 2:00 P.M.

Very truly yours,

James M. Montgomery
James M. Montgomery

cc: Charles D. Reich

JA 34
EXHIBIT "A"

LOWENSTEIN, SANDLER, BROCHIN, KOHL & FISHER
744 BROAD STREET
NEWARK, N. J. 07102

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
MURRY D. BROCHIN
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVON STEINBERG
BRUCE D. SHOULSON
JOHN R. MACRAY 2ND
MURRAY J. LAULICHT
ARCHIBALD S. ALEXANDER, JR.
MARTIN R. GOODMAN
JOHN D. SCHUPPER
STEPHEN N. DERNER

WILLIAM T. KNOX IV
MICHAEL L. ROSSBURG
CHARLES R. CHURCH
ALLEN S. LEVITMAN
R. BARRY STIGER
GREGORY B. REILLY
DAVID W. MILLS
MELVIN GREENBERG
PETER H. EHRENBERG
MICHAEL E. LOES
BARBARA B. WECKER

TELEPHONE
201 624-4600

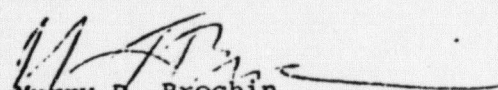
February 14, 1975

Mr. Charles D. Reich
Horsepound Road
RFD #3
Carmel, New York 10512

Dear Mr. Reich:

I suggest you get in touch with Arthur Olick,
Esquire at Anderson, Russell, Kill & Olick, 630 Fifth
Avenue, New York, New York, telephone number 212, 397-
9731, who may be able to help you.

Very truly yours,


Murry D. Brochin

MDB:dbk

cc: Arthur Olick, Esquire

~~541, 8120~~
397-9700

Fred Kahn

JA 35

EXHIBIT "B"

Blackmon
Isenberg
Moulds
Blicker
Wasserman
Samuel
and
Rockla

Attorneys at law

1007 7th Street
5th Floor
Sacramento,
California 95814
(916) 444-8680

March 26, 1975

Charles D. Reich
Horsepound Road
RFD #3
Carmel, New York 10512

Dear Mr. Reich:

My apologies for this late response to your inquiry.

Its very difficult for me to evaluate the merits of your claim without reviewing the data which you have compiled. However, may I suggest that you contact the law firm of Carpenter, Bennett and Morrissey, 744 Broad Street, Newark, New Jersey, 07102. This law firm recently successfully litigated a claim based on the Age Discrimination in Employment Act of 1967 against Exxon Corporation. Perhaps they would be willing to review your material and consider representation.

Sincerely,

David M. Blicher
DAVID M. BLICKER (enc)

Miss. Senter

Partners in

Lorenz
Blicker
Mackey
and
Webb

DMB:no
Via Air Mail

345 Franklin Street
3rd Floor
San Francisco,
California 94102
(415) 626-9301

1801 Century Park East
Suite 700
Los Angeles,
California 90067
(213) 879-5200

1520 State Street,
Suite 210
San Diego,
California 92101
(714) 236-1503

✓

PUTNAM COUNTY
National Bank
 CARMEL, N.Y.

No. **397**
50-680
213

APR 17 1974

Pay to the order of *The Association of the Bar* **10,000**
ten **DOLLARS**

Charles T. Birch

00213006800 **00000001000**

APR 23 75
 0211
 777
 1-120
 PAY ANY BANK

7. PAY TO THE ORDER OF
 THE ASSOCIATION OF THE BAR
 OF THE COUNTY OF PUTNAM
 Legal Department, 42026042
 New York, New York

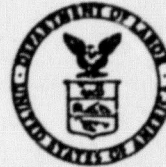
JA 37

EXHIBIT "D"

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
1815 BROADWAY

NEW YORK, NEW YORK 10036

REGIONAL OFFICE



April 6, 1976

Mr. Charles D. Reich
Horsepound Road
RFD #8
Carmel, N. Y. 10512

Dear Mr. Reich:

This will confirm receipt of your notices of February 11, 1976 to sue Dow Badische Co. and of March 2, 1976 to sue Dow Chemical Co. under the Age Discrimination in Employment Act.

Our file has been forwarded to our Richmond Area Office, at 400 North Eight Street, Richmond, Virginia 23240, for the necessary conciliation, conference and persuasion required by Section 7(d) of the Act, at the main office of Dow Badische Co.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leo Friedman", written over a horizontal line.

Leo Friedman
Assistant Regional Administrator
for Wage Hour
Employment Standards Administration

JA 38

EXHIBIT

"E"

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
1515 BROADWAY

NEW YORK, NEW YORK 10036

REGIONAL OFFICE



May 19, 1976

Mr. Charles D. Reich
Horsepound Road
RFD 8
Carmel, New York 10512

Dear Mr. Reich:

In connection with your notice to us of intent to sue Dow Badische Co. under the Age Discrimination in Employment Act, our Richmond, Va. office undertook conciliation and similar action as required under the Act with the firm.

Mr. N. W. Pusey, corporate attorney, has advised us that the firm will not enter into conciliation. A copy of his letter is attached.

Sincerely,

Leo Friedman
Assistant Regional Administrator
for Wage Hour
Employment Standards Administration

Attachment

JA 39

EXHIBIT "F"

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS: REGION 1a

RECEIVED

JUN 24 1976

STATE DIVISION OF HUMAN RIGHTS on the
Complaint of

REGION 1 a

CHARLES D. REICH, a/k/a "Dave" Reich.

Complainant,

VERIFIED COMPLAINT

-against-

No. _____

DOW BADISCHE COMPANY, and DOW CHEMICAL
COMPANY,

Respondents.

Complainant, by his attorneys, COLES and WEINER,
respectfully alleges:

1. I was employed at Dow Badische Company's
New York offices at 350 Fifth Avenue, New York City. The
Company, a 50% owned subsidiary of the Respondent Dow Chemical
Company, also maintains offices at 111 West 40th Street in
New York County.

2. I was fired on June 29, 1973. At termination
of employment, I was then 58 years of age and had been with
the company eight years. The company pension plan requires ten
years of service to be eligible for early retirement and to
vest my pension benefits in that regard.

3. I was wrongfully terminated without cause, because
of my age, in violation of the Human Rights Law of the State
of New York, and other state and federal law.

4. I have continuously been fighting to get my job
back or to get back pay for this wrongful discharge, so that my
pension would vest, or both, plus punitive damages.

WEINER
AT LAW
WAY

JA 40

EXHIBIT "G"

5. I charged Dow Badische Company with violations of the Age Discrimination in Employment Act, before the U.S. Department of Labor, shortly after that, and the case was haphazardly investigated, for several years after that, until I have finally determined that the U.S. Solicitor of Labor does not intend to protect my continuous rights to employment and to a later pension, and have sought the aid of Senator Javits, who intervened, writing letters on my behalf to the Solicitor of Labor handling the matter.

6. I have determined that the only way I can get redress of my grievances is by complaining, in my own right, to the appropriate State and Federal agencies.

7. Accordingly, I file this Complaint by my attorneys Coles and Weiner, and authorize this Division to file a copy of it with the Equal Employment Opportunity Commission.

8. Upon information and belief, my case is not unique, and Dow Badische Company has fired many others in disregard of the Age Discrimination in Employment Act since its inception in 1967, and in violation of the Human Rights Law of New York, § 296, as to those of its employees in New York.

9. The Respondent Dow Chemical Company, a 50% owner of Dow Badische Company, actively controls its subsidiary here in the United States, its partner in this venture being a West German company, the other 50% owner. Dow Chemical maintains offices in New York, at 45 Rockefeller Plaza, upon information and belief, and elsewhere in New York County.

10. During the period of investigation by the U.S. Department of Labor, Dow Badische Company acquired a company named Universal Textured Fibres, of which company, one Robert Siebert was then the Director of Marketing and/or Vice President.

11. During the Fall of 1975 I chanced to meet Mr. Siebert on a street corner in New York City. During the course

COLES & WEINER
ATTORNEYS AT LAW
1775 BROADWAY
NEW YORK, N.Y. 10019

of the ensuing conversation, Mr. Siebert informed me that during the course of his own employment at Dow Badische Company he was called by someone and asked if he had any memoranda or such matter concerning me; he was , if the response was affirmative instructed to destroy it.

12. Upon information and belief there has been a calculated conspiracy to destroy evidence in my case, to withhold data supportive of my charge to the U.S. Solicitor of Labor, and to make it difficult if not impossible to prosecute this case.

13. I have not yet commenced any action in any court of law, but will do so after the filing of this Complaint to this Division. I have previously informed the Solicitor of Labor of my intention to do so pursuant to the rights accorded me by the Age Discrimination in Employment Act of 1967.

14. Upon information and belief, the addresses of the Respondents are as follows:

DOW BADISCHE COMPANY: 111 West 40th Street, NY NY

DOW CHEMICAL COMPANY: 45 Rockefeller Plaza, NY NY

Charles D. Reich
CHARLES D. REICH

STATE OF NEW YORK:
COUNTY OF NEW YORK: ss.:

CHARLES D. REICH, being duly sworn, deposes and says that he is the Complainant in the above action; that he has read the foregoing complaint and the same is true to his own knowledge except as to those matters stated to be upon information and belief, and as to those matters Complainant believes them to be true.

Charles D. Reich
CHARLES D. REICH

SWORN TO before me this
24th day of JUNE 1976

Harold M. Weiner

HAROLD M. WEINER
Notary Public, State of New York
No. 31-9576985
Qualified in New York County
Commission Expires March 30, 1978

WEINER & WEINER
ATTORNEYS AT LAW
1778 BROADWAY
NEW YORK, N. Y. 10019



THE DOW CHEMICAL COMPANY
MIDLAND, MICHIGAN 48640



Printed in U.S.A.

Form No. 160-128-70

YOUR RETIREMENT PLAN



JA 43

EXHIBIT "H"



DOW BADISCHE COMPANY

WILLIAMSBURG, VIRGINIA 23185

January 28, 1976

Mr. Charles D. Reich
Horsepound Road
R. F. D. 8
Carmel, New York 10512

Dear Mr. Reich:

Your account currently has a balance of 27 shares of Dow stock. Distribution of the vested portion in your account can be requested anytime. You will become 100% vested on 10/31/1980 when you complete 10 years of plan membership.

If you should elect to retire from the Supplementary Retirement Plan at the present time you would receive 30% of your account or approximately 8 shares.

At the time of your termination, you had 8.1 years of credited service in the Employee Retirement Plan. Ten years of credited service are required for vesting of benefits. Your benefits were not vested and consequently you are not eligible for a monthly pension.

I hope this answers your question. If not, please call me collect.

Sincerely yours,

W. W. Switzer
Pension Administrator

WWS:bes



JA 44

EXHIBIT "I"

Dow Chemical owns 50% of Dow
Badische Co. I wrote Dow Chemical in
to protect my job & pension.

Charles D. Reich
P.O. Box 52
North Salem
New York 10560

June 25, 1973

Mr. George Momany, Director Personnel Services
Dow Chemical Company USA
Midland, Michigan 48640

Dear Mr. Momany:

As I told you by telephone today I was fired this afternoon but I am at a loss to know why. I do not think it reflects well on the Dow Chemical Company nor do I think that Dow Chemical Company would condone this knowing all the facts and background. In my present state of mind the only way I feel capable of telling you about this is to start at the beginning.

I joined Dow Chemical Company on October 15, 1965 as Product & Sales Manager of all acrylic fibers. Exhibit A attached describes the position. It was to include responsibility for all acrylic sales - natural or dyeable fiber, producer colored fiber (Zefkrome) in both apparel and carpet areas. The attached call reports and memos attached show that carpet applications were included and that was known by everyone concerned in Williamsburg. It was the carpet opportunity

I wanted and turned down another position for 1
This agreement was made by Amos Ruddock and Alfred Greenfield. They were in charge of marketing. After Dow Badische was formed a few months later, or rather my being advised about it (February or March 1966) I asked Don Spaulding if he knew the conditions under which I joined. He checked on this and told me that it was as I stated.

After two weeks orientation at Williamsburg in October 1965 I returned to the New York office. Mr. Ruddock asked that I do a temporary project before taking over all sales. The project was to find a way to use about half a million pounds of off grade Zefkrome fiber. Briefly I got Collins & Aikman Corporation interested and together we started a men's & boy's sweater program with Barclay Knitwear, the largest in the business. I also sold another mill, the large chains were convinced and the problem was solved

Excerpts from the monthly progress reports written by Mr. Ruddock &/or Mr. Greenfield attached describe the progress I made.

I also began development work in an entirely new area - Zefkrome in sliver knits for women's pile coats. The mills I worked with were keenly interested. However, Williamsburg production eventually said they could not meet the tolerances required and the program was ended.

Sometime later Zefkrome in all apparel was discontinued. After two years possibly, it was started again. The sliver knit project was given to some one else.

The chain people told me they were most pleased with the sweater program and were very sorry to see it terminated.

During the first four/five months I asked Mr. Ruddock several times if the conditions under which I joined Dow Chemical still prevailed. He said "Yes, no change" even though I had not assumed the full job for which I joined in good faith. During this time Mr. Greenfield took me on a trip to meet some of the mill people with whom I would be working and I was introduced as being in charge of all acrylic sales. J.P. Stevens Company was one of them.

On March 9, 1966 Mr. Ruddock held a meeting and told Greenfield, Ralph Cobb, Bob Stump and I that all previous agreements were void and that I would continue to do what I undertook as a special assignment as well as handle Zefkrome in apparel only. My job thus became less than one third of what I had joined Dow Chemical for.

I was 50 years of age when I joined and I could not see going out to look for another job. There aren't that many in the fiber business. Mr. Ruddock said something about we would all eventually assume positions of responsibility.

We knew about Dow Badische then and Mr. Faubion came on the scene. I asked Mr. Ruddock if he would tell Mr. Faubion about the basis of my joining Dow Chemical Company. He said he would. Mr. Connolly, Marketing Vice-President arrived in July 1966 and I told him about the circumstances under which I joined.

During the Fall 1966 Ruddock, Greenfield and Don Spaulding left the company which was now Dow Badische. Since then all the people in marketing/sales left for various reasons except for myself and one other. I am the oldest in age (58 July 15) and in time with Dow Badische, in sales/marketing.

Mr. Connolly began to hire new people for the management positions. These were sales positions for which I believe I was qualified. I was removed from sales and appointed Merchandising Manager, Apparel for acrylic fibers in Jan. 1967. Please see attached announcements of people who were brought in.

Subsequently, Mr. Byam was brought in as Merchandising Manager of Apparel & Carpeting. I reported to him. That was December 1967.

Next I was made merchandising manager, men's wear, June 1968. Mr. Reynolds joined in June 1968 as merchandising manager Women's wear. Please see announcements attached. In February 1969 Mr. Reynolds was made Apparel merchandising manager and I reported to him. Reynolds left in 1970 or 1971.

*Please see
excerpts for
monthly
progress
reports
March 1965*

I don't recall the timing but all merchandising for apparel was stopped. Mr. Byam was transferred. I was appointed to apparel sales. Everyone else in merchadising apparel was let go. As I recall this happened in 1971. There were three of us as salesmen. Then one was transferred, leaving another and myself.

During December 1971 two new and younger men were hired as salesmen in New York. They have today responsible positions concerning duties and substantial business turned over to them. Attached announcements re Kennedy and Wagner.

I'm getting tired and I'm sure you are. I'll try to be brief. I don't know why I was fired. I have enclosed some evidence in comments from various management people praising me for the job I have done. Please see their comments on the material enclosed.

There have been many job opportunities in marketing for which I am qualified and in which I would have been interested. I've been fired and I think it represents something that just does not justify in view of my experience and time with the company.

I am two years away from early retirement. Now at 58 years of age to say the least I'm shocked.

I will try to enclose my sales during 1972 & 1973. For whatever it's worth I think both sales in dollars and pounds are over twice what was set up as a quota. This is without the benefit of nylon yarn sales which were transferred from Dow Badische to universal Textured Fibers.

As you probably know the fiber producers are all sold up. I can't imagine any of them being interested in me today and particularly at the age of 58.

I'm sure you must know how greatly I'd appreciate a review by you and Mr. Earle Barnes and how terribly much this can mean to me and my family. I have two children still in school, one at college.

Sincerely,

Charles David Reich

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
CHARLES D. REICH, :
 :
Plaintiff, : REPLY AFFIDAVIT IN
 : SUPPORT OF MOTION TO
-against- : DISMISS, OR FOR SUMMARY
 : JUDGMENT
DOW BADISCHE COMPANY and :
DOW CHEMICAL COMPANY, : 76 Civ. 2870 (IBW)
 :
Defendants. :
-----X

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

STEVEN J. GLASSMAN, being duly sworn, deposes and
says:

1. I am an attorney at law with the firm of
Kaye, Scholer, Fierman, Hays & Handler, attorneys for defen-
dants herein. I submit this affidavit in reply to plain-
tiff's affidavit and memorandum of law dated October 21,
1976, and in further support of defendants' motion to dismiss
the Complaint, or in the alternative for summary judgment,
dated October 8, 1976.

2. On July 30, 1976, defendants served interroga-
tories and requests for documents on plaintiff which
requested, amongst other things, all correspondence or other
documents received by plaintiff from agencies, instrumentali-
ties and/or individuals in federal government through whom
plaintiff sought relief based on his claims of age discrimi-
nation. A copy of that request, and plaintiff's answers,
dated September 16, 1976, were annexed to the Notice of
Motion herein, dated October 8, 1976.

3. Several of the documents listed in plaintiff's answers, copies of which were furnished to defendants therewith, establish that plaintiff was, on numerous occasions, advised of the filing requirements and specific time limitations of the federal Age Discrimination in Employment Act ("ADEA"), which requirements and time limitations plaintiff failed to comply with, and which failure forms the basis for the within motion.

4. By letter dated December 11, 1973, Norman Bromberg, Acting Area Director, U.S. Department of Labor, sent to Mr. Reich a pamphlet summarizing the provisions of the ADEA, and emphasized the requirements with specific time limits which govern a private suit under the ADEA. A copy of that letter, produced by plaintiff in this action, is annexed hereto as Exhibit A.

5. By letter dated April 2, 1974, Bernard A. Clark, Area Director, U.S. Department of Labor, again sent to Mr. Reich an ADEA pamphlet, emphasized the requirements and specific time limitations which govern a private suit, and stated that information which Mr. Reich had submitted to the Department of Labor was not considered a notice to the Secretary of Labor of intent to file suit. A copy of that letter, produced by plaintiff in this action, is annexed hereto as Exhibit B.

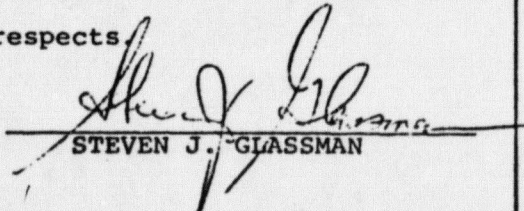
6. By letter of August 13, 1974, Mr. Clark wrote to Mr. Reich again, enclosed a copy of the ADEA itself, and again emphasized the requirements and time limits which govern the filing of a private action. A copy of that letter, produced by plaintiff in this action, is annexed hereto as Exhibit C.

7. By letter of January 23, 1975, Leo Friedman, Associate Asst. Regional Director for Employment Standards, U.S. Department of Labor, advised Mr. Reich of the solicitor's office conclusion that there was no basis for litigation by the Department on Mr. Reich's behalf. A copy of that letter, produced by plaintiff in this action, is annexed hereto as Exhibit D.

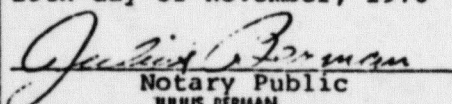
8. By memorandum dated January 7, 1975, a copy of which was subsequently obtained by plaintiff, Francis V. LaRuffa, Regional Solicitor, U.S. Department of Labor, described the basis of the Department's conclusion that there was no factual basis for the allegation that Mr. Reich was terminated due to his age, or that age played any part in this decision. A copy of that memorandum, produced by plaintiff in this action, is annexed hereto as Exhibit E.

9. The affidavit of W.M. Caviston, General Counsel for, and Assistant Secretary of, Dow Badische, also submitted herewith, establishes that Dow Badische is not a subsidiary of Dow Chemical, and that Dow Chemical does not exercise, and has never exercised, any control over Dow Badische's business practices or employment policies, or terms and conditions of employment of any employee, including plaintiff Charles D. Reich, which could possibly result in liability on the part of Dow Chemical for the acts alleged in the Complaint herein.

WHEREFORE, it is respectfully requested that the within motion to dismiss, or in the alternative for summary judgment, be granted in all respects.


STEVEN J. GLASSMAN

Sworn to before me this
15th day of November, 1976


Notary Public
JULIUS DERMAN
Notary Public, State of New York
No. 41-5290165
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1978

JA 50

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
MANHATTAN AREA OFFICE
26 FEDERAL PLAZA — ROOM 2948
NEW YORK, N. Y. 10007

TELEPHONE: 264-8153

Exhibit A

December 11, 1973



Mr. Charles D. Reich
Horsepond Road
RFD #3
Carmel, N. Y. 10512

Dear Mr. Reich:

This is to acknowledge receipt of the information you furnished us about practices by Dow Badische Company, 350 Fifth Avenue, New York, N. Y., which you believe to be unlawful under the Age Discrimination in Employment Act of 1967.

This matter has been assigned to one of our Compliance Officers who will be in touch with you about it in the near future.

A pamphlet summarizing the provisions of the Act is enclosed for your information. As you will note on page 4, there are certain requirements with specific time limits governing the circumstances under which an employee may file his own suit under this Act.

Sincerely yours,

Norman Bromberg
Norman Bromberg
Acting Area Director

Enclosure: Pamphlet

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
NEWARK AREA OFFICE
870 BROAD STREET
(201) 645-2279

NEWARK, NEW JERSEY 07102



April 2, 1974


Mr. Charles D. Reich
Horsepond Road
RFD #3
Carmel, New York 10512

Dear Mr. Reich:

As a result of the information you submitted, an investigation of Dow Badische Co., 350 Fifth Ave., New York, N.Y. has been scheduled. I regret that circumstances are such that there will be a delay in completing this investigation.

In view of this delay and to avoid any misunderstanding, your attention is again called to page 4 of the enclosed pamphlet. As you will note, there are certain requirements with specific time limits governing the circumstances under which an employee may file his own suit. The fact that you submitted information concerning an alleged unlawful practice has not been considered a notice to the Secretary of Labor of intent to file suit. We do not, of course, encourage or discourage such suits. This is entirely up to you.

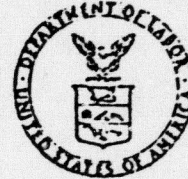
Sincerely yours,


Bernard A. Clark
Area Director

Enc.
ADEA pamphlet

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
NEWARK AREA OFFICE
870 BROAD STREET
(201) 645-2278

NEWARK, NEW JERSEY 07102



August 13, 1974

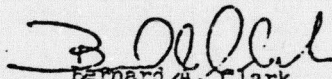
Mr. Charles D. Reich
Horsepond Road
RFD #3
Carmel, New York 10512

Dear Mr. Reich:

Recently you gave us information concerning an alleged unlawful practice under the Age Discrimination in Employment Act, regarding your former employer Dow Padiscene Company, 350 Fifth Avenue, New York, N.Y. As I informed you via telephone on July 24, 1974, conciliation was attempted but proved to be unsuccessful because the company denied that age was a factor in your dismissal.

Our investigation is continuing, consequently there will be a delay until the matter is resolved. I am enclosing a copy of the Act for your information. As you will note on page 4, there are certain requirements with specific time limits governing the circumstances under which an employee may file his own suit under the Act. We do not of course encourage or discourage such suits. The decision is entirely up to you.

Sincerely yours,


Bernard A. Clark
Area Director

Enc.
Act

Exhibit C

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
1515 BROADWAY

OFFICE OF THE
ASSISTANT REGIONAL DIRECTOR

NEW YORK, NEW YORK 10036

January 23, 1975



Mr. Charles D. Reich
Horsepond Road
RFD #3
Carmel, New York 10512

Dear Mr. Reich:

In our meeting on December 3, 1974, with relation to your complaint under the Age Discrimination in Employment Act against Dow Badische Co., I advised you we would follow up on the additional information you provided at that time and that the matter would then be submitted to the solicitor's office of the Department of Labor for consideration.

I regret I must advise you that the solicitor's office, having considered the matter in great depth, advises us there is no basis for litigation by the Department of Labor in your behalf.

Since the firm has refused to make any adjustment to you as the result of our investigation activity, litigation had been the only other possible avenue of approach.

You have been notified previously of your individual rights under Section 4 of the Act.

I am very sorry that we have been unable to help you in this matter.

Sincerely yours,

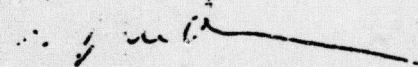

Leo Frielman
Associate Asst. Regional Director
for Employment Standards

Exhibit D

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
1515 BROADWAY
NEW YORK, NEW YORK 10036

RE: January 7, 1975

TO

DE: SOL:PR:mm

RE: Dow Badische Co.

Solicitor's Brief



CO: Frank B. Mercurio
ARD for ESA

The enclosed file was forwarded to this office for review of the sufficiency of the evidence to justify an ADEA complaint. It is our opinion that the information gathered during the investigation supports the conclusion that there is no factual basis for the allegation that the complainant Charles Reich was terminated due to his age or that age played any part in this decision.

The narratives

summarize the conversations with the complainant and company officials and counsel as well as documentation provided by all. Without further cumulative commentary on the results of a very thorough investigation, we note only the highlights supporting the recommendation not to file a civil action.

Without being able to prove that Reich was one of many employees terminated in the protected age group and thus part of a statistical pattern of age discrimination, the prima facie case would necessarily consist of employment practices that treated Reich differently than others similarly situated or that the practices of the employer has a disparate effect upon older employees. That is, lacking here proof that age was the only factor in the decision to terminate, we would have to go forward with proof that the circumstances surrounding the employment of Reich were such to raise an inference that age played a part in the decision to terminate. At present we have no such facts. Further,

Exhibit E

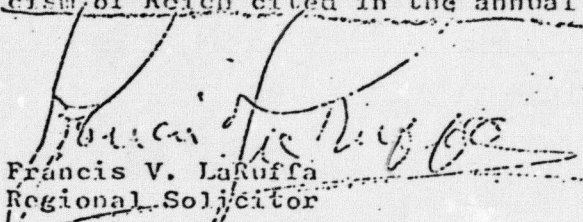
The latter approach of course raises a rebuttal inference that can be more than met by the employer herein.

The key facts demonstrating that age was not a factor in Reich's treatment are the following:

1. Reich was hired at the age of 50 for a high level management job and continued in the employ of the company until 58 years of age.
2. After unsatisfactory performance in the managerial position, Reich was not fired but relocated to a sales position.
3. After increasingly poor performance evaluations in 1971 and 1972 for Reich's work as a salesman, the company continued to attempt internal transfers of Reich rather than termination.
4. Reich's sales records were the poorest in his department, though this record does not appear to be the sole basis for termination. The method by which the company measures sales productivity appears to be in terms of dollars of goods sold. Reich's criticism that golden buyers were steered to other younger salesmen is not conclusively rebutted. The company does represent that inability to fill orders due to produced shortages, which Reich claim also to affect his sales, was not a criteria used in job evaluation. The company's response to Reich's charge regarding the transfer of one client shows that other salesmen were also affected some of them no doubt to a greater degree than Reich, who shared only 4.6 of the total.
5. Possible but as yet uncorroborated statements that particular corporate clients requested Reich be removed as their sales agent.
6. Treatment of Reich at time of termination included an option to remain on the payroll for an additional 14 weeks, which Reich accepted, and efforts to meet with Reich on his unemployment situation, which Reich did not take advantage of.

7. At least one other person not in the protected age group was terminated for poor performance while others over 40 were retained in the New York office.

The full exploration of the alleged bases for discrimination demonstrate that the employee's picture of the company practices was shortsighted because of limited information. Reich had no comparative picture of the sales productivity of others, young and old, in his office and thus was not aware of the relative value of his efforts. Furthermore, he was not given copies of the company's written evaluation reports and thus made an inaccurate assessment of his own performance at the company. Based on facts available at this time there is no basis for proving that age played a role in Reich's termination. Additional investigation into the comparative selling productivity of the different New York salespersons is not recommended in view of the other and varied bases for criticism of Reich cited in the annual evaluation reports.


Francis V. LaRuffa
Regional Solicitor

Attachment: 1 file

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X
CHARLES D. REICH, :
Plaintiff, :
-against- : 76 Civ. 2870 (IBW)
DOW BADISCHE COMPANY and :
DOW CHEMICAL COMPANY, :
Defendants. :
- - - - -X

A F F I D A V I T

W. M. Caviston, after first being duly sworn, upon his oath states as follows:

1. That he is General Counsel for, and Assistant Secretary of, Dow Badische Company, and that in such capacities he is familiar with the corporate structure, employment policies, and general business practices of that corporation.

2. That Dow Badische Company was incorporated on May 16, 1958 under the laws of the state of Delaware, and continues to exist under the laws of the state of Delaware.

3. That since the date of its incorporation, up to and including the date of execution of this Affidavit, the outstanding capital stock of Dow Badische Company has always been owned fifty-percent by The Dow Chemical Company, a Delaware corporation and fifty-percent by a wholly-owned subsidiary of BASF AG (formerly known as Badische Anilin & Soda Fabrik AG), a West German corporation.

4. That Dow Badische Company was originally formed, and continues to exist, as a joint venture of The Dow Chemical Company and BASF AG, and not as a subsidiary corporation of The Dow Chemical Company or BASF AG.

Caviston Affid.

5. That neither The Dow Chemical Company nor BASF AG exercises, nor have either of them ever exercised, any control whatsoever over the business practices, employment policies, or terms and conditions of employment of any employee, of Dow Badische Company, including the employment of the Plaintiff herein. The term, "terms and conditions of employment," includes, without limitation, hiring and termination of employees, salary structure of employees, and fringe benefits accorded to employees, including, without limitation, such retirement benefits as may be accorded to employees.


6. That since its incorporation, the business practices, employment policies and terms and conditions of employment of employees, of Dow Badische Company, have always been determined, and continue to be determined as of the date of execution of this Affidavit, by the Board of Directors of Dow Badische Company.

7. That since its incorporation, and continuing up to the date of execution of this Affidavit, various officers and employees of The Dow Chemical Company and BASF AG have served on the Board of Directors of Dow Badische Company, but that such representatives of The Dow Chemical Company or of BASF AG have never constituted, nor do they now constitute, a majority of the Board of Directors of Dow Badische Company.

8. That the matters herein contained are true and correct to the best of his knowledge and belief.

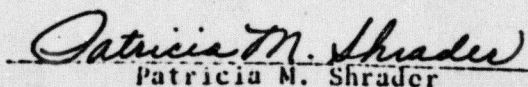
Dated this 25th day of October, 1976.

STATE OF VIRGINIA)
COUNTY OF JAMES CITY) ss.


W. M. Caviston

Subscribed and sworn to before the undersigned, a Notary Public in and for the State of Virginia at Large, this 25th day of October, 1976.

My Commission expires:
December 15, 1978

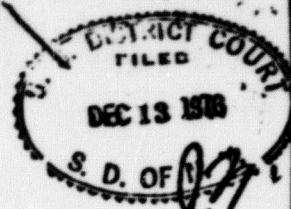

Patricia M. Shrader

TEXT OF MEMORANDUM ENDORSED BY INZER B. WYATT

The requirements of 29 U.S.C. §626(d) are jurisdictional and notice of intent to sue was not given in the required time. Powell v. SW Bell Tele Co. 494 F 2d 485. Hiscott v. Gen'l Elec. Co., 52] F. 2d 632. The motion has been treated as one for summary judgment and is granted. Settle order on notice.

Nov. 19. 1976

23
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
CHARLES D. REICH,

Plaintiff,

-against-

DOW BADISCHE COMPANY and DOW
CHEMICAL COMPANY,

Defendants.
-----X

:
: ORDER AND JUDGMENT

: 76 Civ. 2870 (IBW)
:

WHEREAS the Court has reviewed the motion of defendants Dow Badische Company and Dow Chemical Company to dismiss the Complaint herein, pursuant to Rule 12(b), Fed. R. Civ. P., or in the alternative for summary judgment, pursuant to Rule 56, Fed. R. Civ. P., together with the Complaint, Interrogatories and Answers to Interrogatories, Affidavits and Memoranda of Law filed herein, and has heard oral argument on said motion on the 19th day of November, 1976, and

WHEREAS the Court has found that there is no genuine issue as to any material fact, and that defendants are entitled to judgment as a matter of law, and the Court has signed on November 19, 1976, and filed on November 22, 1976, a memorandum endorsed on said motion,

IT IS HEREBY ORDERED that judgment be entered dismissing the Complaint herein.

Dated: New York, New York
December 13, 1976

Irving B. Blye
U.S.D.J. *mb*

JUDGMENT ENTERED - 12/14/76
Raymond F. Burghardt
CLERK

MICROFILM

DEC 14 1976

COPY RECEIVED

Date 2/14/77

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

Attorney(s) for Appellees